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Letter dated 29 September 1992 from the Permanent Representative of South Africa to the United Nations addressed to the Secretary-General

You will be aware that State President F. W. de Klerk and the President of the African National Congress (ANC), Mr. Nelson Mandela, met on Saturday 26 September 1992 to address the problem of violence and obstacles to negotiations. I am pleased to inform you that agreements were reached between them which have laid the basis for the resumption of negotiations. The ANC delegation advised the Government at the conclusion of the meeting that it would recommend to its National Executive Committee that the process of negotiation be resumed.

The Record of Understanding between the Government and ANC is attached (see annex). You will note that agreement was reached on the following issues and obstacles:

(a) The need for a democratic constituent assembly/constitution-making body and constitutional continuity during the interim/transitional period;

(b) That all prisoners whose imprisonment is related to political conflict of the past and whose release can make a contribution to reconciliation should be released by 15 November 1992;

(c) That the question of hostels will be urgently addressed by the Government by taking further measures by 15 November 1992;

(d) That a proclamation will be issued to prohibit country-wide the carrying and display of dangerous weapons at all public occasions, subject to exemptions based upon guidelines being prepared by the Goldstone Commission;

(e) That while the Government acknowledge the right of all parties and organizations to participate in peaceful mass action, ANC for its part reaffirmed its commitment to the provisions of the Code of Conduct for Political Parties arrived at under the National Peace Accord and the agreement on the conduct of public demonstrations reached on 16 July 1992 under the auspices of the Goldstone Commission. In view of the progress made at the summit meeting and in view of further progress likely to be made when negotiations resume, ANC undertook to examine its programme of mass mobilization as a matter or urgency.

I should be grateful if the text of the present letter and the attached Record of Understanding, together with the attached statement by the Government spokesman on the release of prisoners, relating to prisoners who have committed crimes with a political motive, could be circulated as an official document of the General Assembly, under agenda item 33, and of the Security Council.

(Signed) V. R. W. STEWARD
Ambassador
Permanent Representative

ANNEX

JOINT STATEMENT AND RECORD OF UNDERSTANDING: PRESIDENT FW DE KLERK AND MR NELSON MANDELA - 26 SEPTEMBER 1992

1. The attached Record of Understanding was agreed to.

2. On the way forward -

- The two delegations agreed that this summit has laid a basis for the resumption of the negotiation process.

- To this end the ANC delegation advised the South African Government that it would recommend to its National Executive Committee that the process of negotiation be resumed, whereafter extensive bilateral discussion will be held.

- It was agreed that the practicalities with regard to bilateral discussions will be dealt with through the existing channel.

RECORD OF UNDERSTANDING

1 Since 21 August 1992 a series of meetings was held between Mr Roelf Meyer, Minister of Constitutional Development and Mr Cyril Ramaphosa, Secretary General of the African National Congress. These meetings entailed discussions with a view to remove obstacles towards the resumption of negotiations and focused on the identification of steps to be taken to address issued raised in earlier memoranda. The discussions took note of various opposing viewpoints on the relevant issues and obstacles. It was decided that these issues should not be dealt with exhaustively in the understanding. This document reflects the understanding reached at the conclusion of the discussions regarding these obstacles and issues.

2 The understanding on issues and obstacles included the following, although it was observed that there are still other important matters that will receive attention during the process of negotiation:

a The Government and the ANC agreed that there is a need for a democratic constituent assembly/constitution-making body and that for such a body to be democratic it must:

- be democratically elected;

- draft and adopt the new constitution, implying that it should sit as a single chamber;

- be bound only by agreed constitutional principles;

- have a fixed time frame;

- have adequate deadlock breaking mechanisms;

- function democratically, ie. arrive at its decisions democratically with certain agreed to majorities; and

- be elected within an agreed predetermined time period.

Within the framework of these principles, detail would have to be worked out in the negotiation process.

b The Government and the ANC agreed that during the interim/transitional period there shall be constitutional continuity and no constitutional hiatus. In consideration of this principle, it was further agreed that:

- the constitution-making body/constituent assembly shall also act as the interim/transitional Parliament;

- there shall be an interim/transitional government of national unity;

- the constitution-making body/constituent assembly cum interim/transitional Parliament and the interim/transitional government of national unity shall function within a constitutional framework/transitional constitution which shall provide for national and regional government during the period of transition and shall incorporate guaranteed justiciable fundamental rights and freedoms. The interim/transitional Parliament may function as a one or two-chambered body.

c The two parties are agreed that all prisoners whose imprisonment is related to political conflict of the past and whose release can make a contribution to reconciliation should be released. The Government and the ANC agreed that the release of prisoners, namely, those who according to the ANC fall within the guidelines defining political offences, but according to the Government do not, and who have committed offences with a political motive on or before 8 October 1990 shall be carried out in stages (as reflected in a separate document: Implementation Programme: Release of Prisoners) and be completed before 15 November 1992. To this end the parties have commenced a process of identification. It is the Government's position that all who have committed similar offences but who have not been charged and sentenced should be dealt with on the same basis. On this question no understanding could be reached as yet and it was agreed that the matter will receive further attention.

As the process of identification proceeds, releases shall be effected in the above-mentioned, staged manner. Should it be found that the current executive powers of the State do not enable it to give effect to specific releases arising from the above identification the necessary legislation shall be enacted.

d The Goldstone Commission has given further attention to hostels and brought out an urgent report on certain matters and developments in this regard. The Commission indicated that the problem is one of criminality and that it will have to investigate which localities are affected.

In the meantime some problematic hostels have been identified and the Government has undertaken as a matter of urgency to address and deal with the problem in relation to those hostels that have been associated with violence. Further measures will be taken, including fencing and policing to prevent criminality by hostel dwellers and to protect hostel dwellers against external aggression. A separate document (Implementation Programme: Hostels) records the identification of such hostels and the security measures to be taken in these instances.

Progress will be reported to the Goldstone Commission and the National Peace Secretariat. United Nations observers may witness the progress in co-operation with the Goldstone Commission and the National Peace Secretariat.

e In the present volatile atmosphere of violence, the public display and carrying of dangerous weapons provokes further tension and should be prohibited. The Government has informed the ANC that it will issue a proclamation within weeks to prohibit countrywide the carrying and display of dangerous weapons at all public occasions subject to exemptions based on guidelines being prepared by the Goldstone Commission.

The granting of exemptions shall be entrusted to one or more retired judges. On this basis, the terms of the proclamation and mechanism for exemption shall be prepared with the assistance of the Goldstone Commission.

f The Government acknowledges the right of all parties and organisations to participate in peaceful mass action in accordance with the provisions of the National Peace Accord and the Goldstone Commission's recommendations. The ANC for its part reaffirms its commitment to the provisions of the Code of Conduct for Political Parties arrived at under the National Peace Accord and the agreement reached on 16 July 1992 under the auspices of the Goldstone Commission as important instruments to ensure democratic political activity in a climate of free political participation.

The two parties also commit themselves to the strengthening of the Peace Accord process, to do everything in their power to calm down tensions and to finding ways and means of promoting reconciliation in South Africa.

In view of the progress made in this summit and the progress we are likely to make when negotiations are resumed, the ANC expressed its intention to consult its con-

stituency on a basis of urgency with a view to examine the current programme of mass action.

3 The two parties agreed to hold further meetings in order to address and finalise the following matters which were not completed at the summit:

- Climate of free political activity.
- Repressive / security legislation.
- Covert operations and special forces.
- Violence.

Agreed to at Johannesburg on 26 September 1992:

FW de Klerk	NR Mandela
State President	President: ANC

STATEMENT BY THE GOVERNMENT SPOKESMAN ON THE RELEASE OF PRISONERS WHO HAVE COMMITTED CRIMES WITH A POLITICAL MOTIVATION : 26 SEPTEMBER 1992

It is the Government's position that all political prisoners, as defined in terms of internationally accepted guidelines, were released some time ago in terms of previous agreements. In a spirit of reconciliation and pursuant to agreements reached between the Government and the ANC in preparation for the meeting on 26 September 1992 between the State President and Mr Mandela, the Government has decided to release a number of prisoners, who were imprisoned for politically motivated crimes, on the following basis:

1 The prisoners concerned must have committed crimes with a political motivation.

2 Their crimes must have been committed before 8 October 1990, which is the cut-off date agreed to by both the Government and the ANC.

3 All prisoners who fall within this category, are eligible for release, regardless of their political affiliation.

The release of these prisoners will take place on the following basis:

a A first category of prisoners will be released within days in terms of section 69 of the Correctional Services Act. As many as 150 of the prisoners on the list submitted by the ANC fall into this category and have already been released or are in the process of being released. A process of identification of prisoners falling into this category, but with other political affiliations, is also now taking place.

b A second category, those who are serving life sentences, do not qualify for remission of sentence in terms of section 69 of the Correctional Services Act. They will be released, after a process of identification, before 15 November 1992, in terms of legislation which the Government will present to Parliament during the forthcoming short session in October. The proposed legislation will deal equitably with all those prisoners who qualify and whose release can make a contribution to reconciliation.

Certain prisoners in this category will however, within days, be released on parole on certain conditions. In such cases the parole conditions will be cancelled in the event of Parliament passing the above-mentioned legislation.

In addition to the above-mentioned cases, the Government will submit further legislation to Parliament to enable it to address the cases of persons who have committed simlar offences, but who have not yet been charged or sentenced, in keeping with the Government's position that they should be dealt with on the same basis.

The Government has, in this regard, been guided by the following considerations:

- All prisoners and offenders who fall in this category should be treated on the same basis, regardless of their political affiliation.

- The Government's action in releasing these prisoners does not signify condonement of the crimes which they committed - many of which were atrocious and morally inexcusable.

- However, the Government has, throughout, accepted that national reconciliation and a comprehensive political settlement, will require that the slate should be cleaned with regard to all persons who have committed crimes with a political motivation. Only on this basis can the book finally be closed on the conflict and bitterness of the past.

- Whatever steps are taken should be taken properly and in accordance with the law. In this regard it has consistently been the Government's view that special legislation would be required for the release of certain categories of prisoners and that the use of the State President's powers inter alia that of pardon in terms of section 6(3)(d) of the Constitution would not be appropriate in such cases.